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Report of the Secretary-General

Addendum

The present document contains an additional reply received from the Government of Portugal.

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PORTUGAL

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Regime applicable in Portugal to the entry, residence and departure of aliens

Decree-Laws Nos. 59/93 and 60/93 of 3 March 1993 regulate the regime applicable in Portugal to the entry, residence and departure of aliens who are nationals of countries outside the European Union and within the European Union respectively. At present, immigration to Portugal is essentially from countries outside the European Union.

An alien is defined as anyone who does not possess Portuguese nationality; a resident is anyone who possesses a residence permit valid in Portugal.

Aliens wishing to enter or leave Portuguese territory must do so through the appropriate border posts. In order to enter or leave the national territory, aliens must be in possession of a passport whose validity extends beyond the authorized duration of their stay. In order to enter the national territory aliens must also hold a valid visa. They must also possess sufficient means of subsistence for the duration of their stay in Portugal.

Entry into Portugal is prohibited for aliens whose names appear on a common list (European Union) or on a national list (drawn up by the Aliens and Borders Department) of persons who are not admissible because they either have been expelled from Portugal, or have received a custodial sentence of not less than one year, or are strongly suspected of committing a serious offence, or are considered as representing a threat to public order, to national security or to the international relations of a member State of the European Union. Registration of an alien on the common list depends on a decision by the competent bodies of a member State of the European Union.

Citizens who are not nationals of a member State of the European Union and who enter Portugal by an unsupervised border post must declare their entry within three working days of arrival. The declaration must be made to the Aliens and Borders Department, the Public Security Police, the National Republican Guard or the Border Guard.

Any shipping company or airline that conveys to Portuguese territory passengers or crew members whose entry is refused must require them to return to the point at which they boarded the means of transport, or if that is not feasible, to the State in which the travel document used by them for their journey was issued or to any other place to which they may be admitted. The cost of their return is borne by the carrier.

Visas issued abroad may be either diplomatic, service or consular. Consular visas are issued for the purposes of transit, work (for a relatively short period only; any alien intending to immigrate in order to work is required to apply for a residence visa and to prove he has received an offer of work, an offer of a contract or a work contract, and a place of abode), or

residence, short-term, uniform, study or stopover. A residence visa always requires prior consultation of the Aliens and Borders Department (family reunification being considered a favourable factor) (Decree-Law No. 59/93, article 28).

Travel documents issued to aliens are regulated by Decree-Laws Nos. 438/88 of 29 November 1988 and 267/89 of 18 August 1989, and those issued to refugees by Act No. 38/80 of 1 August 1980.

Applications for residence permits have to be lodged with the Aliens and Borders Department. In all cases aliens must register their place of abode, for the purpose of monitoring the presence of aliens in Portugal.

Aliens may be expelled from Portugal. The grounds for expulsion, under article 67, include unlawful entry or residence on the national territory; endangering national security, public order or morals; the fact that their presence or activity in Portugal constitutes a threat to the interests or dignity of the Portuguese State or of its citizens; interfering unduly in political rights restricted to nationals; failure to comply with the legal requirements applicable to aliens, and committing acts that would have prevented them from being admitted to Portugal.

The possibility of expulsion shall not absolve aliens from any criminal liability they may incur.

While expulsion as a penalty is considered accessory to any penalty resulting from a criminal conviction, it may not be applied automatically, since any interpretation of the law leading to such automatic application is deemed unconstitutional. The rule whereby expulsion constitutes an accessory penalty obtains when the law is interpreted in conformity with the Constitution and the penalty is not applied automatically (Decision No. 41/95 of the Constitutional Court, case No. 713/93, published in the Official Journal, second series, No. 98 of 27 April 1995).

The competent authority in respect of expulsion is the police court of the area of the alien's place of residence or the Aliens and Borders Department. Responsibility for initiating expulsion procedure lies with the Aliens and Borders Department, and the decision to annul the procedure may be taken only by the Minister of the Interior. The deadline for enforcing an expulsion order is 40 days, and responsibility for enforcement lies with the Aliens and Borders Department; aliens may not be expelled to a place where they may be prosecuted for reasons which would constitute lawful grounds for asylum. Aliens who have been expelled are prohibited from re-entering Portuguese territory for a period of not less than three years.

Aliens who have entered Portugal unlawfully and who are to be returned to their country of origin as a result, aliens who are to be expelled and aliens who have applied for asylum and for whom a decision is pending must reside in a temporary transit centre until the decision to expel them is enforced or a decision is taken in respect of their application for asylum (Decree-Law No. 59/93, article 75). Except in cases of asylum, this requirement, which is known as secure residence, is a custodial security measure ordered by the court. It applies until the person is either expelled

or granted a permanent visa or residence permit, and may not exceed two months, subject to weekly review by the court (Act No. 34/94, article 3, of 14 September 1994, Temporary Transit Centres). Aliens residing unlawfully may be detained by any official; they must be transferred to the Aliens and Borders Department and brought before the court within 48 hours for confirmation of their detention. While provision has been made for temporary transit centres by law, none has yet been set up.

Responsibility of different Administration departments for aliens

Health

Under principle XXV of the Framework Health Act (Act 48/90 of 24 August 1990), aliens residing in Portugal are entitled to the benefits of the National Health Service solely on the basis of reciprocity.

Social security

Employed persons and independent workers are automatically incorporated into the contributory system and thus benefit from social security. Persons who register with the voluntary regime (optional social security regime) are also covered. Entitlement to the benefits of the non-contributory regime, which is for destitute persons, is more delicate. Under Act No. 28/84 of 14 August 1984, article 29, the non-contributory regime is intended for nationals, but may be extended, under the terms of the Act, to refugees, stateless persons and aliens residing in Portugal, who are not covered automatically.

Destitute persons residing in Portugal who are not Portuguese citizens are covered by Social Security, under the responsibility of the Directorate General for Welfare.

Education

According to the Framework Education System Act, free State education is intended for Portuguese citizens. Nonetheless, pursuant to a decision taken by the Council of Ministers in 1993 (Decision No. 38/93 of 15 May 1993), provision is made for the schooling of alien children.

Housing

Aliens lawfully residing in Portugal who are affected by rehousing programmes are rehoused, whenever unfit dwellings are demolished and others built, sometimes in other areas.

Vocational training

Decision No. 38/93 of 15 May 1993 of the Council of Ministers also applies to aliens. In the sphere of employment, a contract that is void shall still apply, together with all the rights deriving therefrom, as long as the employment relationship continues (doctrine of de facto contractual relations incorporated into the legislation on contracts of employment).

Justice

In this sphere, all citizens are entitled to legal aid; asylum seekers are not required to be legally in order.

Family reunion

One of the aims of Act No. 59/93 is to facilitate family reunification.

The right to engage in political activity

In the case of aliens who are not citizens of the European Union, only Brazilian citizens may participate in elections, pursuant to the Brazilia Convention of 1971.

Policy measures on behalf of immigrants

The High Commissioner for Immigration and Ethnic Minorities

Decree-Law No. 296-A/95 of 17 November 1995 (thirteenth Constitutional Government Organization Act) provided for the establishment of the post of High Commissioner for Immigration and Ethnic Minorities, placing it under the responsibility of the President of the Council of Ministers. Decree-Law No. 3-A/96 of 26 January 1996 instituted the post of High Commissioner.

The establishment of the post of High Commissioner was made necessary by the new challenges facing Portugal as a country of immigration. This development gave rise to the need for measures to integrate immigrant families into Portuguese society. The ultimate objective of the policy is to avert xenophobia, intolerance and discrimination against aliens living in Portugal.

The High Commissioner has four main tasks:

1. To foster consultation and dialogue with bodies representing immigrants or ethnic minorities in Portugal and to carry out studies into the integration of immigrants or ethnic minorities, in conjunction with social partners, welfare institutions and any other public or private bodies involved in the sphere.

2. To help improve the living conditions of immigrants in Portugal so as to permit their integration into society, while preserving their own identity and culture. The High Commissioner must also help to ensure that all citizens legally resident in Portugal are entitled to dignity and equal opportunities, so as to eliminate discrimination and combat racism and xenophobia.

3. To monitor the action of the various departments of the public administration in Portugal responsible for the entry, residence and departure of aliens, subject to observance of their spheres of authority and those of the competent members of the Government. He is required to cooperate in defining and monitoring policies to combat exclusion, by fostering horizontal interdepartmental measures by the public administration and government departments operating in the sector.

4. To propose measures, and in particular legislative measures, in support of immigrants and ethnic minorities.

The National Commission for the exceptional regularization of aliens

Act No. 17/96 of 24 May 1996 instituted an exceptional regularization procedure for clandestine immigrants. The procedure is coordinated by a National Commission on the exceptional regularization of aliens, which examines applications.

This procedure was intended to enable aliens fully to enjoy their economic, social and cultural rights, particularly in respect of employment, social security benefits and access to housing, as rehousing programmes were reserved for persons whose situation was legal. The exceptional regularization scheme was implemented between 11 June and 11 December 1996.

A total of 35,082 aliens applied for regularization under this procedure; 9,255 of them were from Angola, 6,782 from Cape Verde, 5,308 from Guinea Bissau, 2,330 from Brazil, 1,549 from Sao Tome and Principe and 416 from Mozambique.

Altogether 25,730 of the total were from Portuguese-speaking countries.

Of that total, 3,965 applications were rejected, giving rise to 3,772 appeals, which are currently pending.

A total of 11,856 applications have already received a favourable decision from the National Commission for exceptional regularization.